XI-B-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr.A. 944/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT — Amaldas Tirkey, S/o Martin Tirkey, aged about 23 years, R/o Village Parasoora, P.S.H. Sanna, Distt. Jashpur Nagar (CG).

-Versus-

RESPONDENT — State of Chhattisgarh, Through P.S.H. Officer, P.S.H. Sanna, Distt. Jashpur Nagar (CG).

(Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

1-8-2007

Shri J.K. Shastri, counsel for the appellant.

Shri Ashish Shukla, Addl. Public Prosecutor for the State.

Heard.

Oral judgment dictated on *dias*.

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 28-7-2001 passed by Second Additional Sessions Judge, Jashpur Nagar, in Sessions Trial No.55/2001 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Piyush Bogi and sentenced him to undergo imprisonment for life.

2) The case of the prosecution, in brief, is that in the night of 15-8-2000 deceased Piyush Bogi was at his residence whereas his wife Beronika (PW-1)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

had gone to his daughter's place for consuming *hadia* (intoxicant) and slept there. At about 10.00 p.m. in the night, Piyush Bogi (since deceased) came to the house of his son-in-law and fell down in front of the door. Hearing the sound of Piyush Bogi, his daughter, son-in-law & wife came out of the room. He informed them that Amaldas has attacked him with barber's knife on his neck and after pouring kerosene from small lamp (chimney) set him on fire, suspecting him to be practicing witchcraft. They took Piyush Bogi inside the room. In the morning of 16-8-2000, PW-2 Paskal, son-in-law of the deceased informed the villagers about the incident. Matter was reported by PW-1 Beronika, wife of the deceased, at Police Station Sanna under Ex.P/1. On the basis of which offence under Section 307 of the IPC was registered against the accused. Merg intimation (Ex.P/16) was given from Primary Health Centre, Sanna, by Constable Puniyram. Based on that the offence was converted to Section 302 of the IPC. Thereafter Station House Officer, Police Station Sanna, took up the investigation prepared inquest (Ex.P/3) on the body of Piyush Bogi. During investigation the Investigating Officer took into possession the blood stained & plain soil, one kerosene lamp, match box containing four sticks and one mat under Ex.P/5. One container of Parachute Coconut Oil fixed with wick (*bathi*) under Ex.P/6. Clothes of the deceased were seized under Ex.P/7. The weapon of offence, barber's knife' was seized under Ex.P/8. Site plan (Ex.P/11) was prepared by the Halka Patwari. Body of Piyush Bogi was sent for postmortem examination to the Primary Health Centre, Sanna, where Dr. Ranjit Toppo (PW-6) conducted postmortem and prepared report (Ex.P/14). Doctor opined that the cause of death was due to extensive burn leads severe pain and marked protein fluid loss result increase

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

capillary permeability leads shock. Death was homicidal in nature. Knife in question was sent for examination under Ex.P/15 to Doctor. After examining the same, Doctor gave report and opined that the injury on the neck of Piyush Bogi can be caused by the knife in question.

3) After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpur Nagar, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where learned Second Additional Sessions Judge, Jashpur Nagar, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He examined James Kujur (DW-1) in his defence, who has stated that on 15-8-2000 the family members of Piyush Bogi were weeping, therefore, he went there; saw that Piyush Bogi was already dead and lying in the courtyard of the house. He took him inside the house and returned.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) In this case, there is no ocular or direct evidence. The conviction rests on the circumstantial evidence i.e. oral dying declaration. There is no other evidence to connect the accused with the crime in question. As per the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prosecution case and the First Information Report given by PW-1 Beronika, wife of the deceased, the deceased made oral dying declaration before his wife Beronika (PW-1) & son-in-law Paskal (PW-2), but both of them have turned hostile.

8) PW-1 Beronika, wife of the deceased, in her examination-in-chief has not stated anything that her husband made oral dying declaration before her. On the contrary, she has stated that in the night, her husband came to her son-in-law's house in burnt condition. There was an injury in front of his neck. The deceased did not disclose anything at the residence of his son-in-law. On cross-examination by the Government Pleader, she stated that on enquiry her husband informed that Amaldas had attacked him with a knife and set him on fire after pouring kerosene from lamp. In para 5, she has stated that the matter has been compromised and it has been decided to ensure that the accused is acquitted. In para 6 of her cross-examination by the defence, she has stated that her husband came at the door of the house of her son-in-law and fell down. He did not disclose anything to them. They also did not disclose anything in Police Station. Similar is the evidence of PW-2 Paskal, son-in-law of the deceased. In examination-in-chief, he has not stated that Piyush Bogi made any oral dying declaration. However, on cross-examination by the Government Pleader, he stated that Piyush Bogi (deceased) disclosed that Amaldas attacked him with knife and set him on fire. In para 9 of his cross-examination by the defence, he has turned hostile. He has stated that Piyush Bogi did not say anything regarding his death.

9) PW-4 Shanti Khalkho, daughter of the deceased, has stated that in the night of 15-8-2000 they were in their house. Her father was lying outside the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

gate. When they came out of the room they saw that there was a cut injury on the neck of her father and body was burnt, therefore, they took her father inside the room. On enquiry, her father disclosed the name of Amaldas and said that Amaldas is saying him that he is practicing witchcraft that is why he has attacked him. In cross-examination, she has stated that in the night they did not disclose about the incident to anybody. After hearing her cries, James Kujur came to their house in the night, but he has not been examined by the prosecution. He has been examined as defence witness, who has stated that he heard the cries of family members of Piyush Bogi, he went towards that side and saw that Piyush Bogi was lying dead. Except the evidence of Shanti Khalkho (PW-4) there is no other evidence.

10) PW-1 Beronika, wife of the deceased and PW-2 Paskal, son-in-law of the deceased & husband of PW-4 Shanti Khalkho, have stated that Piyush Bogi did not disclose anything to them that who attacked him and who set him on fire, whereas PW-4 Shanti Khalkho has stated that her father was lying outside and they took him inside the room. He discloses that Amaldas attacked him. But when the wife & son-in-law of the deceased have stated that the deceased did not disclose anything, it is difficult to believe the evidence of Shanti Khalkho (PW-4) that the deceased made oral dying declaration. There is no other independent witness. Shanti Khalkho (PW-4) in her cross-examination has stated that James Kujur came to their house in the night. James Kujur has been examined by the defence. He has stated that Piyush Bogi was already dead and the family members were weeping. He has not stated anything that Piyush Bogi made any oral dying declaration that Amaldas attacked him.

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11) In view of the above, it is difficult to believe the evidence of PW-4 Shanti Khalkho and there is no other material to connect the accused with the crime in question. Therefore, we are of the considered opinion that the finding of trial Court convicting the accused for commission of offence under Section 302 of the Indian Penal Code cannot be sustained.

12) In the result, the appeal succeeds. Conviction & sentence imposed upon the accused/appellant under Section 302 of the Indian Penal Code are set aside; he is acquitted of the said charge. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge